the Lord Chancellor in *Walter* v. *Lane*.[3] In that case a verbatim report of speeches made by Lord Rosebery was published in the newspaper "The Times". The defendant admitted copying the speeches from the said report and incorporating them in his book called "Appreciations and Addresses: Lord Rosebery". His argument that there could not be any copyright in the published report because Lord Rosebery and not the reporter was the author of the speeches was rejected. On page 548 the Lord Chancellor said:

"I do not find the word 'original' in the statute, or any word which imports it, as a condition precedent, or makes originality of thought or idea necessary to the right...."

On page 549 he went on to say:

"Each reporter is entitled to report, and each undoubtedly would have a copyright in his own published report;"....

The same view was expressed in *University of London Press, Limited* v. *University Tutorial Press, Limited*[1] and in the Australian case *Inala Industries Pty. Ltd. and Others* v. *Associated Enterprises Pty. Ltd.*[2] These authorities apply inasmuch as our Copyright Enactment is substantially a reproduction of the English Copyright Act, 1911.

Apart from the authorities section 8(iii) of the Enactment is clear in terms that there is a statutory presumption that copyright exists in any work. It is, of course, a rebuttable presumption. For the respondent to rebut it must be shown that the appellant's works are nothing more than direct tracings of other original works or drawings. This the respondent failed to do for various reasons. In the first place P.W.D. drawings said to have been copied from can hardly be described as complete works which could be used as final working drawings. If they could there was no point in buying the appellant's drawings. Secondly, it seems clear from the evidence that the drawings in the series 61020 are still needed by the Ministry for building additional schools. The evidence of the contractors point to this. As such they are clearly published works in which copyright exists.

For the reasons above stated I would allow this appeal with costs here and below.

In the writ of summons dated 19th February, 1963 the appellant has prayed for declarations in terms as stated therein. He has also asked for certain consequential reliefs such as account and order for payment due upon taking such account. Alternatively in paragraph 10 of the statement of claim he prayed for damages for infringement of copyright. So far as he is entitled to be paid under clause 14 for the use of his drawings any monetary relief would have to be assessed in accordance with that clause. Accordingly, there will be an order for account in respect of the use of the drawings in the series 61020 which have not been bought by the Ministry and any amount found due under clause 14 upon taking such account shall be paid to him. Liberty to apply for such order or orders as may be necessary to give effect to this judgment.

The appellant shall have the refund of his deposit.

Azmi L.P. and **Suffian C.J.** concurred.

Appeal allowed.

Solicitors: *Skrine & Co.*

CHEAH TEONG TAT v. HO GEE SENG & ORS.

[O.C.J. (Syed Agil Barakbah J.) November 20, 1973]
[Alor Star — Originating Motion No. 20 of 1972]

Practice and Procedure — Appeal — Application to serve notice of appeal out of time — Ignorance of law not sufficient to constitute ground — Special circumstances must be shown — Subordinate Courts Rules, 1950, Order 39.

In this case the applicant applied for leave to file notice of appeal out of time. The applicant had filed notice of appeal but did not serve a copy of the notice on the respondents or their solicitors within fourteen days of the decision being made. The copy of the notice of appeal was subsequently served on the respondent's solicitors and the relief sought was for the court to deem that the service was good service or alternatively to extend the time for service of such notice.

Held: as the applicant had shown no special circumstances upon which the court could exercise its discretion to extend or enlarge the time to file notice of appeal, the application must be dismissed.

Cases referred to:-

(1) *Ahmad bin Yahaya & Anor.* v. *Ahmad bin Sulaiman* [1972] 2 M.L.J. 109.

(2) *Liew Chee Tat* v. *Lok Moon & Ors.* [1972] 2 M.L.J. 29.

(3) *Gatti* v. *Shoosmith* [1939] 1 Ch. 841.

(4) *In re Coles and Ravenshear* [1907] 1 K.B. 1.

(5) *Chong Kueng Ying & Ors.* v. *Lovis Lavague* [1972] 1 M.L.J. 180.

(6) *John Paddicombe Wilkins & Ors.* v. *John Patrick Kenelm Wilkins & Anor.* [1951] M.L.J. 80.

(7) *Krishnasamy & Ors.* v. *D.C. Butler Madden* [1947] M.L.J. 182.

ORIGINATING MOTION.

Mrs. B. H. Oon for the applicant.

A. Jayadeva for the respondent.

Syed Agil Barakbah J.: This is an application for leave to file notice of appeal out of time for the purpose of appealing to this Court. The relief sought is for the Court to hold that notice of appeal served on the respondents' solicitors on July 8, 1972, to be deemed good service or, alternatively, the time for service of such notice on the respondents' solicitors be extended for a period of 14 days from the date of any order to be made by this court.

The applicant who was the defendant in Civil Action No. 37 of 1971 being dissatisfied with the decision of the learned President, Sessions Court, Sungei Patani, who on May 6, 1972, gave judgment in favour of the respondents, the plaintiffs in the said action, filed notice of appeal in the Sessions Court, Sungei Patani, on May 11, 1972, but did not serve a copy of such notice on the respondents or their solicitors. On the same day he applied for a certified copy of the notes of evidence. Subsequently on June 29, 1972, he was supplied with the notes of evidence together with the grounds of judgment and a request to deposit a sum of $200 into court for the purpose of preparing the appeal record and costs of appeal within 14 days from the date stated above. On July 4, 1972, he consulted his solicitors. On July 6, 1972, he sent the required fee and notice of appointment of solicitors to the Sessions Court. The same day his solicitors wrote to the respondents' solicitors forwarding them by way of service a copy of the notice of their appointment as well as a copy of the notice of appeal. The respondents' solicitors in turn in their letter dated

July 9, 1972, gave notice to the applicant's solicitors that they would raise an objection against the appeal being heard on the ground that notice of appeal was not filed or served on them within the time limited for appeal under Order 39 rule 2(6) of the Subordinate Courts Rules, 1950.

Such application was filed by way of motion by Messrs. Jayadeva & Zahir on behalf of the respondents as Civil Appeal No. 22/72. At the commencement of the hearing Mrs. B. H. Oon raised an objection to the respondents' application being headed as a civil appeal instead of by originating motion and submitted it should therefore be struck out. Mr. Jayadeva for the respondents explained that at the time motion was filed on July 4, 1973, the memorandum of appeal had already been filed by the applicant and the Civil Appeal No. 22/72 was listed as pending since this court was not aware that notice of appeal had not been served. I agree with Mrs. Oon that there was an irregularity but I think I have put the matter right under Order 70 rule 1 of the Rules of the Supreme Court by hearing only the application proper and subsequently at the close of the proceeding by striking out with costs the motion filed by Mr. Jayadeva headed as Civil Appeal No. 22/72.

Turning back to the main application, suffice it to say that I have dealt with quite in detail the procedure for filing notice of appeal against the decision of the Sessions Court under Order 39 of the Subordinate Courts Rules, 1950, in *Ahmad bin Yahaya & Anor.* v. *Ahmad bin Sulaiman.*[1] I held in that case that ignorance of the procedural law does not constitute sufficient material upon which I could exercise my discretion to enlarge the time to file notice of appeal where the appellant has failed to file it within the time required by rule 2(6), Order 39. It was necessary for the applicant to show special circumstances to enable the court to exercise its discretion and it is not sufficient merely to show that the proposed appeal has merits. That decision was upheld by the Federal Court on appeal. In the course of my judgment I have construed the meaning of sub-rule (6) thus: —

"Although no time limit within which the appellant has to serve a copy of such notice is expressly provided in sub-rule (6), by virtue of rule 3(1) of the same Order, it can safely be implied that the appellant has to do so within the same period as provided for filing such notice in the court appealed against, i.e. within fourteen days within which such decision was pronounced. That such is the intention of the legislature is clear because it is only after the appellant has complied with the requirements of rule 2 which includes sub-rule (6) that the court appealed against is bound to prepare all the necessary records as required under rule 3(1) after which notice that such records are ready will be served on the appellant by the said court."

The case of *Liew Chee Tat* v. *Lok Moon & Ors.*[2] was called to my attention. There, my brother Sharma J., being faced with a similar question, declined to exercise his discretion in favour of the applicant who was reluctant to own his mistake. It was held the question for the court to exercise its discretion had not arisen as no application or attempt had been made to urge upon the court that delay should be excused or time be extended. With regard to the interpretation of rule 2(6), Order 39, it seems to be at variance with my own in *Ahmad bin Yahaya's* case, *supra*. The decision in *Gatti* v. *Shoosmith*[3] was also called to my attention. It was held that under Order 58 rule 15 of the Rules of the Supreme Court where there was a mistake by a legal adviser which resulted in leave to appeal not being served within the time prescribed by the rule, the court may, in its discretion grant leave to appeal, notwithstanding that the time for entering an appeal has expired. The decision in *In re Coles and Ravenshear*[4] was departed from on the ground of amendments having been made in 1909 by striking out the reference to "special leave of the Court of Appeal" in Order 58 rule 15 and prefacing with the words "Subject and without prejudice to the power of the Court of Appeal under Order 67 rule 7" thus "putting the matter of enlarging the time under Order 58 rule 15, under Order 64 rule 7 as the governing rule". That gives the Court in England far wider powers in exercising its discretion. No such amendments have been made in our Rules of the Supreme Court. The position in our law therefore is the same as the pre-1909 English law. (*per* Suffian F.J. (as he then was) in *Chong Kueng Ying & Ors.* v. *Lovis Lavagna*[5] and which I have pointed out in *Ahmad bin Yahaya's* case, *supra*). As a result, the principle laid down in *In Re Coles and Ravenshear* still holds good as authority in so far as the law in this country is concerned. (See *John Puddicombe Wilkins & 2 Ors.* v. *John Patrick Kenelm Wilkins & Anor.*,[6] and *Krishnasamy & Ors.* v. *D.C. Butler Madden*[7]).

I hold the view that if I am given liberty to use my own judgment in the matter without adherence to procedural rules, I would be inclined to allow extension of time. However, my discretion has to be exercised on principles in which judicial power and discretion ought to be exercised. In the light of the authorities stated above, some of which are highly persuasive and some of which are binding on me, I am not free to use that discretion without applying the accepted principle. If the applicant wants to succeed he has to show special circumstances upon which the court can exercise its discretion to extend or enlarge the time to file notice of appeal. That the appeal has merits as submitted by Mrs. Oon is not sufficient by itself without special circumstances. After all the case had been fully heard on the merits in the court below and the presumption in this court is that, until the contrary is shown, the decision of that court is correct. It was the mistake of the applicant for not filing the notice of appeal within time. His affidavit clearly shows that he filed such notice in the Sessions Court within time and applied for a certified copy of the notes of evidence on the same day. He could have easily inquired from the registry of the procedure if he was ignorant of it but did not do so. He was already well out of time when he consulted his solicitors. His solicitors must have been aware of the position at the time and although they served notice on the respondents' solicitors about two days later, this court was never informed of it until the filing of notice of motion and affidavit on August 21, 1972. There are therefore no special circumstances in this case as it is purely based on either ignorance or mistake. If that is considered as a 'special circumstance' then in every case in which a blunder is made about the filing of notice of appeal the time ought to be extended. Special circumstances, to my mind, include instances where the applicant has

been misled by the other side or where some mistake has been made in the registry itself and he was misled by an officer of the court or where delay in filing notice has been caused by unforeseen circumstances like sudden death or inevitable accident or sudden serious illness or something of that kind which reasonably account for the delay. Under any of these circumstances, extension of time may be allowed. (*per* Farwell L.J. in *In Re Coles and Ravenshear, supra*). The mere fact of misunderstanding of the rules is not such a special circumstance as to induce the court to give leave to extend the time to file notice of appeal.

I had no alternative but to dismiss the application with costs. I ordered the sum of $150 deposited in court to be paid to the respondents to account for the costs.

The motion by Mr. Jayadeva in Civil Appeal No. 22/72 was struck out with costs.

Order accordingly.

Solicitors: *B. H. Oon; Jayadeva & Zahir.*

TAN FONG GUAN & ORS. v. MALAYAN BANKING BHD.

[F.C. (Suffian C.J., Gill and Ong Hock Sim F.JJ) November 20, 1973]

[Kuala Lumpur — Federal Court Civil Appeal No. 2 of 1973]

Land Laws — Charges of land to secure advances by bank up to limit of $35,000 and $30,000 respectively — Whether limit covers both principal and interest or whether it excludes interest.

In this case one Lim Meng See had executed two charges in favour of the respondent bank as security for all advances to be made by the bank to him up to the limit of $35,000 under the first charge and $30,000 under the second charge. Subsequently the land was subdivided and Lim Meng See transferred various lots in the land subject to the said charges to the appellants. Lim Meng See became bankrupt and at the date of the adjudication of bankruptcy the amount due to the bank in respect of the advances made was $73,173.79 with further interest at the rate of 9.6% per annum. The respondent bank claimed payment of the amount due. The appellants offered to pay the sum of $65,000 for discharge of the lands but this was not accepted and the respondents applied to the court for the land to be sold to satisfy the total amount due to them. In the High Court it was held that the limits of $35,000 and $30,000 were intended to apply to principal only and therefore judgment was given for the respondents. The appellants appealed.

Held (Suffian C.J. and Ong Hock Sim F.J., Gill F.J. dissenting) allowing the appeal: the words "up to the limit of $35,000" and "up to the limit of $30,000" in the charges clearly govern both principal and interest and therefore on repayment of the sum of $65,000 with interest the appellants were entitled to have the land discharged from liability under the charges.

Cases referred to:-

(1) *White* v. *City of London Brewery Company* (1889) 42 Ch. D. 237, 248.

(2) *Rengasamy Pillay* v. *Comptroller of Income Tax* [1970] 1 M.L.J. 233.

(3) *Inland Revenue Commissioner* v. *Oswald* [1945] A.C. 360, 379.

FEDERAL COURT.

Chung Shiu Tett for the appellants.

Chan Siew Yoon for the respondent.

Suffian C.J.: The facts and the arguments in this appeal have been well stated in the previous judgments* and there is no need for me to repeat them.

With respect I agree with my brother Ong that the limit applies both to principal and interest, not to principal only and that this appeal be allowed.

In my view the words "up to the limit of $35,000" in the recital of the first charge clearly govern both principal and interest. They would have governed only principal (not interest) if the recital had read:

"I, Lim Meng See... desiring to render the said land available for the purpose of securing to and for the benefit of Malayan Banking Ltd.... the repayment on demand of all sums advanced to me bv the Bank in manner hereinafter appearing up to the limit of $35,000 (with interest thereon)".

In my view the words "up to the limit of $35,000" in the operative part of that charge also govern both principal and interest, not principal only. They would have governed only principal (not interest) if the operative part had read:

"I do hereby charge the said land for the benefit of the bank with the repayment on demand of the balance which on the account between me and the Bank shall for the time being be owing, etc., for principal up to the limit of $35,000 and for interest, etc., commission and other usual banker's charges".

In the event there shall be an order as follows:

1. This appeal is allowed with costs here and in the court below.
2. The learned trial judge's order is hereby set aside and instead there shall be an order as proposed by my brother Ong.

Appellants' deposit to be returned to them.

Gill F.J.: On 2nd May 1962 one Lim Meng See executed a charge over his land held under Grant for Land No. 7072 for Lot 1599 in the Mukim of Labis in the District of Segamat, Johore in favour of the respondents, the Malayan Banking Berhad, as security for the repayment of all sums advanced to him by the respondents up to the limit of $35,000 bearing interest at 12 per cent per annum with monthly rests. On 11th June 1963 he executed a second charge over the same land as security for the repayment of all sums advanced to him by the respondents up to the limit of $30,000 bearing interest thereon at 9.6 per cent per annum with monthly rests.

The two charges, which were duly registered, were in identical terms except for the difference in the amount to be advanced on each charge and the rate of interest. The relevant parts of the recital and the operative clause of the first charge are as follows:

"I Lim Meng See... desiring to render the said land available for the purpose of securing to and for the benefit of Malayan Banking Limited... the repayment on demand of all sums advanced to me by the bank in manner hereinafter appearing (with interest thereon at the rate of 12 per cent per annum) up to the limit of Dollars Thirty five thousand only ($35,000/-).

DO HEREBY CHARGE the said land for the benefit of the bank with the repayment on demand of the balance which on the account between me and the bank shall for the time being be owing in respect of cheques, bills, notes or drafts drawn, accepted or endorsed by me either alone or jointly with another or others... up to the limit of Dollars Thirty five thousand only ($35,000/-) for principal and for interest at the rate of 12 per cent per annum with monthly rests, commission and other usual bankers' charges,...."

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* Judgments of Gill and Ong Hock Sim F.JJ. below. — Ed. M.L.J.